

Prepared Remarks – PED
Monday, March 16, 2015

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Senator Hartsell and Representative Horne, thank you for asking us to appear today.

My name is Nick Fountain and I am with the law firm of Young Moore and Henderson, Raleigh, NC. This month marks 43 years as counsel to occupational licensing Boards. This likely exceeds the experience of anybody in the room.

These two Boards each have seven Board members and each includes contractors, inspectors, public members and members from the Engineering faculties of NC State, A&T or UNC Charlotte. In the case of both Boards, there is no single license type which constitutes a majority of the Board.

The two Boards together have approximately 28,000 licensees. Between them the Boards receive approximately 1,000 complaints annually. These complaints are divided evenly between licensed contractors and unlicensed persons. Roughly half of each type complaint turn out to have no merit after being investigated, but all complaints are investigated. The Boards have a well-organized process to carry out informal conferences and formal hearings with Board members being in the role of decisionmaker. In addition, the two Boards process between 50-75 injunction cases in courts across North Carolina each year. The cases involve carbon monoxide gas leaks, electric shock as well as economic issues such as false pretenses, job abandonment, failure to obtain permits and covering up for others. In our view, the health and safety benefits

of these two Boards are beyond question. It is our view that these two Boards are both run like a business with great efficiency and low budget combined with vigorous enforcement.

As regards the report from the PED staff, there is no demonstrated need for a new layer of bureaucracy to be created at the suggestion of the PED staff and no justification to take money from the licensing Boards to pay for such duplication. Following me are three other speakers. We have coordinated our remarks so as not to overlap. Miriam Baer from the Real Estate Commission will discuss the PED report and the oversight we already receive. Jay Campbell from the Pharmacy Board will detail the basis upon which we conclude that the recent Dental Board decision is not a major cause for concern, nor justification for change.

In my case the Boards have not used cease and desist letters in twenty or thirty years, and that technique appears to have been the problem for the Dental Board.

After giving you a thumbnail sketch of Board operations as I have here, the remainder of our time is to be spent in explaining a draft bill addressing the real needs of the licensing boards. This draft legislation is important to present at this time because it has the support of 15 or more of the larger licensing Boards and no known opposition. This bill has been provided to Senator Hartsell and Representative Horne and we understand the bill has been sent to bill drafting. We are not distributing this draft bill at this point because we fully expect it to receive editing or other potential modifications by bill drafting or by the bill sponsors before filing.

In our comments we will of necessity level criticisms at the PED Report on Occupational Licensing Boards. However, we fully understand that Chuck Hefren was given a virtually impossible job in attempting to understand and compare 50 licensing Boards in a short period of time. Such a job, based on four interviews and a survey, was bound to result in mistakes. It would only compound those mistakes to make major decisions based upon that limited study.

The draft bill undertakes to respond to one of the concerns raised by both the Auditor and the PED staff with respect to the question of who is an occupational licensing board. In the draft, we have both named the Boards and have developed criteria by which to define the Boards, including being fee-supported without revenue from the State, having the ability to seek and obtain injunctions regarding practice without the appropriate license, having the responsibility to set standards and issue licenses among other things.

The next component of this draft bill addresses the excess number of reports now demanded of occupational licensing Boards. Our Boards already report to various components of State government in 16 or 18 different reports. This bill would, without reducing the amount of information provided, reduce the number of reports by several and consolidate these in a single annual report which would include the financial components as well as performance components and would do so by amending provisions of Chapter 93B, just as would the section above on the definition of a Board.

Of particular importance is that the principal recipient and review of the Annual Report would be the APO committee of the General Assembly and its staff. We already learned that the reports get limited review or consideration by the Secretary of State's office or the Attorney General's office. This draft legislation would make clear the APO is expected to look at these reports.

Another component of this draft bill increases the maximum amount of per diem and allows each Board the ability, by rule, to establish per diem from \$0 to \$200.00. The change and a global look at this question is long overdue inasmuch as per diem has not changed in many, many years. Another section of the bill examines the ethics training and eliminates duplicative training provided both by the standard ethics commission course and the in-house training which

is required by G.S. 93B and given annually by Board staff and counsel. The training would be no less, but duplication would be eliminated.

Another section of the bill raises the question of venue. At the present time appeals from Board decisions are required to be carried to the county wherein the licensee is located. Many such licensees, for reason of economy or otherwise, would rather their appeal be handled in Raleigh. The draft bill would allow the licensee the choice whether to appeal to the Wake County Superior Court or appeal to his home county.

By the same token, venue for injunction cases for non-licensees would be modified such that a case could be filed in either Wake County or in the county wherein the work occurred or the defendant resided, a choice provided to the entity filing the case. Again, this would save money in some situations and be convenient to witnesses in other situations.

In conclusion, neither the report of the PED staff nor the recent Dental Board decision justify significant change in operations of the Occupational Licensing Boards in North Carolina. There is oversight of hearings through the court system, oversight of injunction cases through the court system, oversight of Board rules through the Rules Review Commission, oversight of finances through the audits, and oversight of broader policy issues through the APO Committee of the General Assembly.

Finally, the Boards speaking here, along with others, have combined to launch new specialized training for staff and Board members of all the occupational licensing boards so as to respond to the concern that many newer or smaller Boards may not be handling their processes as well as older, more established Boards. The preparation and presentation of this free training course is one more demonstration of the reality that we can solve any perceived problem at a lower cost and without the increased bureaucracy suggested by the PED staff.

We thank you for the opportunity to comment on the PED Report as well as the recent Dental Board decision. We stand ready to assist with positive steps for the protection of the public in North Carolina.

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